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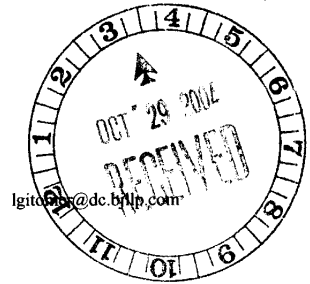
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October 29, 2004

ENTERED
Office of Proceedings

OCT 29 2004

Part of
Public Record

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

RE: Finance Docket No. ³⁴⁶⁰⁸~~34486~~, *Ohio Valley Railroad Company—Acquisition
and Operation Exemption—Petition for Expedited Relief for Service Emergencies
Pursuant to 49 C.F.R. §§ 1146 and 1147*

Dear Secretary Williams:

Enclosed are the original and 10 copies of the Response of CSX Transportation, Inc. and three computer diskettes in containing the Response.

Please time and date stamp the additional copy of this letter and the Response and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours

Louis E. Gitomer
Attorney for: CSX Transportation, Inc.

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

34608
Finance Docket No. ~~34486~~



OHIO VALLEY RAILROAD COMPANY—ACQUISITION AND OPERATION
EXEMPTION—HARWOOD PROPERTIES, INC.—PETITION FOR EXPEDITED RELIEF
FOR SERVICE EMERGENCIES PURSUANT TO 49 C.F.R. §§ 1146 AND 1147

RESPONSE OF CSX TRANSPORTATION, INC.

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: October 29, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34486



OHIO VALLEY RAILROAD COMPANY—ACQUISITION AND OPERATION
EXEMPTION—HARWOOD PROPERTIES, INC.—PETITION FOR EXPEDITED RELIEF
FOR SERVICE EMERGENCIES PURSUANT TO 49 C.F.R. §§ 1146 AND 1147

RESPONSE OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) responds to the Petition for Expedited Relief for Service Emergencies Pursuant to 49 C.F.R. §§ 1146 and 1147 (the “Petition”) filed by the Ohio Valley Railroad Company (“OVRC”) and Mid-America Locomotive and Car Repair, Inc. (“Mid-America”) with Surface Transportation Board (the “Board”) on October 22, 2004.¹

BACKGROUND

On March 23, 2004, OVRC filed a Notice of Exemption to lease from Harwood Properties, Inc. and operate approximately 2.8 miles of trackage consisting of tracks 4 through 11 and connecting tracks in the former Harwood Yard in Evansville, IN. The Board served a notice of exemption on April 22, 2004 and denied a petition for revocation filed by the Indiana Southwestern Railway Corporation (“ISW”) in a decision served on September 28, 2004.

The genesis of this proceeding is a dispute concerning the interchange of rail traffic between OVRC and ISW. It is alleged that ISW is OVRC’s only connection to the national railroad system. In the Petition, OVRC alleges that ISW physically removed the connection between OVRC and ISW. OVRC seeks an order requiring replacement of the connection

between OVRC and ISW. OVRC is also seeking “to conduct interim direct interchange operations” over 300 feet of ISW’s track with CSXT.

Based on correspondence from ISW to OVRC dated October 22, 2004, and the reply from OVRC to ISW dated October 26, 2004, it appears that the immediate emergency has been resolved. However, based on OVRC’s correspondence to the Board dated October 26, 2004, OVRC is still seeking Board-mandated trackage rights and direct interchange with CSXT as an alternative to interchange with ISW.

ARGUMENT

This dispute is – and should remain – between OVRC and ISW. CST has no wish to become embroiled in a continuing controversy between these two entities. However, because OVRC is seeking direct interchange with CSXT on an interim basis, CSXT is directing this response to OVRC’s request to directly interchange with CSXT.

CSXT does not directly connect with OVRC. OVRC connects with ISW and ISW connects with one of CSXT’s high density main lines. CSXT cannot permit operations by either ISW or OVRC over its main line to an interchange point on the CSXT system because of the potential interference with CSXT’s through trains and harm to the fluidity of CSXT’s system. CSXT has an existing interchange arrangement with ISW that does not require such potential interference. The interchange between CSXT and ISW is on the portion of ISW’s rail line in Harwood Yard. CSXT delivers and pulls traffic to and from ISW.

Under 49 U.S.C. § 10742, a railroad “shall provide ... interchange ... to and from its respective line and a connecting line of another rail carrier....” Since CSXT and OVRC do not

¹ OVRC and Mid-America will jointly be referred to as “Petitioners.”

connect, CSXT contends that it does not have an obligation under the statute to interchange with OVRC. OVRC was aware of this when it acquired the line.

With the post-petition developments described in the October 22, 2004 and October 26, 2004 letters between the real parties to this dispute, OVRC's request for direct interchange with CSXT should be rejected summarily. CSXT can and will accept interchange of OVRC-ISW traffic, but will do so under its existing interchange arrangements with ISW. That was "the lay of the land" when OVRC filed its Notice of Exemption seeking common carrier status. If conflict between ISW and OVRC has interfered with OVRC's expectations, then the proper solution is for the Board to require interchange between OVRC and ISW, not to mandate that CSXT accept direct interchange from a second railroad on ISW.

However, if the Board were to order CSXT to interchange with OVRC on ISW's line or OVRC's property, CSXT has several concerns that it believes the Board should address.

There would be additional costs to CSXT as a result of an order to conduct direct interchange with OVRC. CSXT does not believe that it should pay for any of the costs for services that it incurs to interchange with OVRC. Instead, CSXT contends that those costs should be absorbed by OVRC or passed on to OVRC's shippers by OVRC.²

CSXT has substantial experience in selling and leasing rail lines to new or existing railroads (for ease of reference the new railroad will be referred to as the "Shortline"). Prior to the start of operations by a Shortline, CSXT and Shortline enter an agreement to govern freight operations and the relation between CSXT and Shortline (the "Agreement"). No such Agreement exists between CSXT and OVRC because CSXT and OVRC do not connect and CSXT was not involved in the creation of OVRC.

CSXT enters an Agreement with the Shortline to achieve efficient rail service to and from the line and customers and to establish a mutually beneficial commercial arrangement. Under the Agreement between CSXT and Shortline, among other issues, Shortline generally agrees to: (1) acknowledge its common carrier responsibility with respect to service to and from shippers located on the Line; (2) adopt all stations on the Line as stations to which it holds itself out to provide service and all classifications, rules, concurrences, traffic agreements, authorities, powers of attorney, and other instruments whatsoever insofar as said instruments apply to, from or via the adopted stations; (3) evidence such adoption by publication, filings, and notices to the appropriate regulatory authorities and rail industry agencies; (4) become a signatory to the rail industry's Interchange Rules, Car Service and Car Hire Agreement, and Accounting Rules; (5) protocols for establishing public and contract joint line rates; (6) establish, publish and administer a tariff containing such other rules and charges governing matters customary in the rail industry, including demurrage charges, as Shortline shall deem appropriate; (7) mechanics for all billing of line haul freight charges and related administrative functions; (8) interchange traffic at the locations and in the manner specified in interchange agreements entered between CSXT and Shortline; (9) responsibility for operations; (10) adopt Association of American Railroad ("AAR") data exchange system requirements and use its best efforts to work with CSXT to maximize the electronic flow of information; (11) install electronic data interchange with the AAR, and transmit via EDI to CSXT advance train consist information prior to arrival at interchange point(s); (12) the rights and responsibilities for car supply, Car Hire and Mileage Allowances and Car Hire (including negotiated car hire rates); (13) subscribe to the Car Service and Car Hire Agreement contained in AAR Circular No. OT-10, which together with the Code of

² It appears that the sole shipper served by OVRC and OVRC are commonly controlled.

Car Hire Rules and Code of Car Service Rules, governs the use and movement between the parties of cars bearing railroad reporting marks; (14) responsibility to pay all Car Hire and Mileage Allowances accrued on its lines for a foreign car or a private car directly to the party to whom such charges are due as car owner or car lessee; (15) gather car orders and forecast car needs from shippers on the Line; (16) liability and indemnification provisions; and (18) other provisions unique to the specific transaction.

As enumerated above, the safe and efficient operation of a railroad requires many terms to be agreed to between connecting railroads. Therefore if the Board is to contemplate an order requiring CSXT to engage directly in interchange with OVRC, CSXT contends that the Board must require CSXT and OVRC to enter an agreement to resolve all of the above-enumerated issues, and any other issues unique to OVRC's operations.

CSXT also notes that if the Board were to take the extraordinary and unnecessary step of ordering CSXT to interchange directly with OVRC, CSXT will not agree to pay OVRC for the interchange. It is OVRC, not CSXT, asking for mandated interchange and, if the Board grants such relief, it would be manifestly unjust to expect CSXT to pay for interchange requested by OVRC. In CSXT's view, whatever the reason for the creation of OVRC as a "carrier," OVRC should seek compensation for whatever work it does directly from its customer(s).

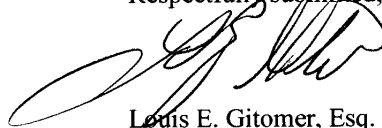
When CSXT decides to sell or lease a line of railroad to a Shortline, CSXT assures itself that the issues that need to be addressed before operations can begin are addressed in an agreement similar to that briefly described above. CSXT believes that the same is true of the other Class I railroads and most of the Class II and Class III railroads. However, when a railroad such as OVRC is created out of what had been non-carrier industry track, there is no process by which these important terms can be resolved before concluding the transaction and commencing

operations with a demand for interchange. Matters such as are now before the Board, or other problems, are occasionally the result. CSXT believes that the continued creation of new short line railroads would be improved if every new short line were required to certify to the Board with its notice of exemption that it had entered into an agreement with its connecting railroads resolving the issues addressed in the Agreement described above. With regard to sales and leases from Class I, II or III railroads to new operators, no additional burden will be placed on the new short line by such requirement – it is already a part of the sale/lease transaction. Where a short line is created by acquiring a line not owned by an existing railroad, the burden of reaching agreements with its connecting railroads will also be much less burdensome than engaging in litigation over such necessary items as interchange.

CONCLUSION

Based on the recent correspondence between OVRC and ISW, CSXT believes that the Board does not need to exercise its emergency powers at this time. CSXT is not involved in the dispute between OVRC and ISW as to interchange between those parties. CSXT can interchange traffic to or from OVRC with ISW. CSXT respectfully requests the Board to deny any request for an order directing CSXT to interchange directly with OVRC. Finally, if the Board were to consider ordering CSXT to interchange traffic directly with OVRC on ISW's line or on OVRC's line, CSXT respectfully requests the Board to require OVRC to make CSXT whole for all administrative and operational costs incurred, and require OVRC to enter an agreement with CSXT governing all of the issues enumerated above by CSXT for the interchange of traffic and operation of a new railroad.

Respectfully submitted,



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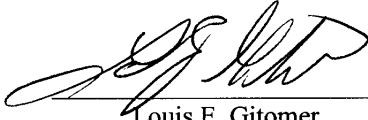
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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: October 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Response to be served by first class mail, postage pre-paid on Counsel for Ohio Valley Railroad Company, Mid-America Locomotive and Car Repair, and Indiana Southwestern Railway Corporation.



Louis E. Gitomer
October 29, 2004